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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/729,445	12/05/2003	Glenn Carlin	6459-08	1022

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McCormick, Paulding & Huber LLP
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EXAMINER

KUMAR, RAKESH

ART UNIT	PAPER NUMBER
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3654

DATE MAILED: 09/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.		Applicant(s)	
	10/729,445		CARLIN ET AL.	
	Examiner		Art Unit	
	Rakesh Kumar		3654	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 July 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Final Rejection

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 3, 8 and 14-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Lockhart (U.S. Patent Number 4,817,818).
3. Referring to claims 1, 3, 8 and 14-17. Lockhart discloses a distributing and retailing dispenser (Figure 11) for disposing in an upside down orientation at least one container (90) having a body portion and a neck portion (Figure 9) wherein the neck portion is disposed below the body portion when the product is in the upside down orientation (Figure 7), the display device (Col. 3 line 21) comprising: an elongated member (cylindrical member; 112 or container 22) defining a conduit extending between first (top end; see top end of 112; Figure 11) and second longitudinal (bottom end; see bottom end of container connecting member 64; Figure 6) ends for accommodating at least one container (90) in an upside down orientation such that the neck portion of the at least one container (90) faces the second (bottom end) end of the conduit ; and a stop member (member 88 stop containers 90 from flowing out of member 112 or 22

Art Unit: 3654

continuously, thus it is a stop member; Figure 7) associated (when member 64 is attached to 112; Figure 11 and 7) with the elongated member (112 or 22) and disposed beyond the conduit (member 64 is disposed beyond the bottom end of conduit 112; Figure 7) and adjacent (attached to bottom end as shown in Figure 6) to the second end for providing a barrier to thereby prevent a container from accidentally leaving the conduit.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 2 rejected under 35 U.S.C. 103(a) as being unpatentable over Lockhart in as applied to claim 1 above, and further in view of Ferro (U.S. Patent Number 4,781,307).

6. Referring to claim 2, Lockhart discloses a distributing and retailing dispenser (Figure 11) wherein the stop member (88) is spaced longitudinally beyond the second longitudinal end (bottom end; Figure 6) such that a portion of a container (90; see outward projecting end of container 90; Figure 7) disposed at the second longitudinal end (bottom end; Figure 6) is disposed between the second longitudinal end and the

stop member (88) for grasping (by the neck 94 of container 90) and being dispensed from the container (112).

Lockhard does not disclose a stop member spaced from the second longitudinal end such that a portion of a container disposed at the second end is exposed between the second longitudinal end and the stop member.

Ferro disclose a stop member (34; Figure 1) positioned at the base of the conduit (12) wherein the stop member (34) is spaced from the second end (the top end created by the slant cut of container 12 to allow visibility of article 17) such that a portion of a article (17) disposed at the second end (the top end created by the slant cut of container 12 to allow visibility of article 17) is exposed (see visible portion of member 17 from outside looking into container through the cutout in Figure 7 and 8) between the second end and the stop member (34) for grasping and being dispensed from the conduit (12).

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the apparatus of Lockhart to include a stop member disposed on the outside of the second end of the container as taught by Ferro because the article to be dispensed could be retained with in the dispenser and at the same time be visible to the dispenser user.

7. Claims 4, 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lockhart.

8. Referring to claim 4, Lockhart discloses all the claimed features of claim 4 but does not disclose the projection (106) defining an opening to accommodate the net portion of the container.

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the apparatus of Lockhart and include and enlarged portion of the projection (106; Lockhart) such that the enlarged portion accommodates the neck portion of the container because it would eliminate the need of a specially designed bottle container.

9. Regarding claims 6 and 7, Lockhart discloses a display dispenser (Figure 11) wherein the stop member (88) further includes at least one brace member (102) coupled to the projection (106) and the elongated member (112).

10. Claim 5 rejected under 35 U.S.C. 103(a) as being unpatentable over Lockhart in as applied to claim 4 above, and further in view of Shelly (U.S. Patent Number 3,625,397).

11. Referring to claim 5, Lockhart discloses all the claimed features of claim 5 but does not disclose the neck portion to be pivoted out of the opening to dispense.

Shelly discloses a container dispenser (Figure 4) wherein the opening is open-ended for permitting the neck portion of a container (114) accommodated therein to be pivoted out of the opening in order to dispense the container from the conduit (see dispensing of the container in Figure 4).

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the apparatus of Lockhart and include an opening, open-ended for permitting the neck portion of a container to be pivoted out of the opening in order to dispense the container from the conduit as disclosed by the teaching of Shelly, because removing the container from the housing would be made easier.

12. Claims 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lockhart in view of Fuss (U.S. Patent Number 4,261,480).

13. Referring to claims 9-11. See above. Fuss discloses an article holder (Figure 1) wherein the elongated member (12) that is generally transparent. Fuss also discloses in Figure 7 a housing of the dispenser comprising a flexible plastic material for folding the dispenser when the dispenser is not in use.

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the apparatus of Lockhart to include a transparent elongated member as taught by Fuss because a transparent housing would provide better visibility of the products in the dispenser.

It would have been further obvious to one of ordinary skill in the art at the time of the invention was made to modify the apparatus of Lockhart to include a flexible housing as taught by Fuss because the flexible portion of the housing could be folded to reduce the storage size.

14. Claims 12 and 13 rejected under 35 U.S.C. 103(a) as being unpatentable over Lockhart in view of Brewster (U.S. Patent Number 5,039,046).

15. Referring to claims 12 and 13. See above. Brewster discloses a bottle holder (Figure 1) wherein suction cups (20) are used as fasteners to mount the holder to an external mounting surface.

It would have been further obvious to one of ordinary skill in the art at the time of the invention was made to modify the apparatus of Lockhart to include suction cups as fasteners as taught by Brewster to provide the ability to mount to an external surface.

Response to Arguments

Applicant's arguments filed 07/10/2006 have been fully considered but they are not persuasive.

The applicant argues the definition of the "stop member" as viewed by the Office as contrary to the claimed subject matter and as taught Lackhart. The applicant is reminded that an elaborate argument does not traverse the need of disclosure of claimed embodiment, and the responsibility of distinguishing the claimed apparatus and language of the claims over the teaching found in the prior art. In the view of the Office a stop member is viewed as any member impeding the continuous flow of articles from the dispenser container by obstructing, catching or retaining the articles from freely exit

Art Unit: 3654

out of the dispenser. The apparatus of Lockhart teaches an obstruction disposed within the exiting portion of the dispenser used retain the article from fully exiting the dispenser thus, it is considered to be a "stop member" in the means of stopping the articles from continuously exiting the dispenser.

Applicant's arguments with respect to claims 1-17 have been considered but are moot in view of the new ground(s) of rejection, see modified rejection above.

Conclusion

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Samuelsson (US 4,046,284) teaches of a stop member (23) outside the dispenser (11).

Heim (US5,810,681) discloses a dispenser open at both ends having a stop member (44) positioned to pivot articles out of the dispenser.

Tiller (US 5,147,101) dispenser with a stop member (36).

Beardsley (US 1,782,526) discloses a collapsible dispenser.

Holley (US 5,730,353) discloses a collapsible dispenser.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rakesh Kumar whose telephone number is (517) 272-8314. The examiner can normally be reached on 8:00AM - 4:30PM.

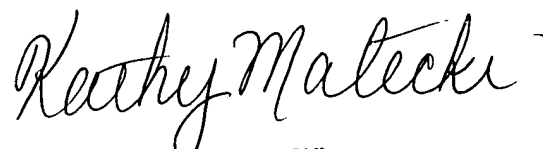
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kathy Matecki can be reached on (571) 272-6951. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Application/Control Number: 10/729,445
Art Unit: 3654

Page 10

RK
September 7, 2006

A handwritten signature in black ink, reading "Kathy Matecki". The signature is written in a cursive style with a large, stylized "K" and "M".

**KATHY MATECKI
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600**